

Officer History

Officer Name: PLUMITALLO, JOHN
Tax ID: 961108 **Sex:** M
Shield: 16755 **Race:** White
Rank: PO **Command:** ZK0
Birth Year: [REDACTED] **Appt Date:** 01/06/2016
Age: [REDACTED] **Tenure:** 6

CCRB #	CMD	Incident Date	Reported Date	Allegation	Allegation Disposition	Board Discipline Recommendation*	NYPD Allegation Disposition	NYPD MOS Penalty
201900579	075	01/18/2019	01/19/2019	OMN - Failure to produce stop and frisk report	OMN	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
201906894	075	07/31/2019	08/04/2019	Abuse - Stop	Substantiated (Command Discipline A)	Substantiated (Command Discipline A)	No Finding	Command Discipline - B
				Abuse - Search (of person)	Unsubstantiated			
				OMN - Improper use of body-worn camera	OMN			
				[REDACTED]	[REDACTED]			

*Board Discipline Recommendations were not issued for complaints closed prior to the CCRB's adoption of the NYPD's Disciplinary Matrix on 03/15/2021. With the adoption of the NYPD Disiciplinary Matrix, CCRB now issues a Board Discipline Recommendation for officers that is seperate and apart from the disposition of the allegations substantiated against the officer.

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201909062	075	10/15/2019	10/16/2019	OMN - Failure to produce stop and frisk report	OMN		No Disciplinary Action-DUP	No penalty	
				Abuse - Frisk	Unsubstantiated				
				Abuse - Stop	Unsubstantiated				
				Abuse - Search (of person)	Unsubstantiated				
				OMN - Improper use of body-worn camera	OMN		No Disciplinary Action-DUP	No penalty	
				Abuse - Failure to provide RTKA card	Substantiated (Command Discipline A)	Substantiated (Command Discipline A)	No Disciplinary Action-DUP	No penalty	
				OMN - Failure to prepare a memo book entry	OMN		No Disciplinary Action-DUP	No penalty	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
202003958	805	06/05/2020	06/06/2020	OPMN - Improper use of body-worn camera					
				Force - Physical force					
Total Charges = 34					Total Cases = 9				

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CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #6	CCRB Case #: 201906894	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input type="checkbox"/> Injury
Incident Date(s) Wed, 07/31/2019 10:25 PM	Location of Incident: Pitkin Avenue and Miller Avenue; 75th Precinct stationhouse		Precinct: 75	18 Mo. SOL 01/31/2021	EO SOL 9/17/2021
Date/Time CV Reported Sun, 08/04/2019 1:40 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 08/04/2019 1:40 PM		

Complainant/Victim	Type	Home Address
1. A [REDACTED] B [REDACTED]	Comp/Witness	[REDACTED] NY 11218
2. A [REDACTED] S [REDACTED]	Victim	[REDACTED] NY 11226
3. Individuals	Victim	[REDACTED]
4. K [REDACTED] C [REDACTED]	Victim	[REDACTED] NY 10303

Subject Officer(s)	Shield	TaxID	Command
1. Officers			075 PCT
2. POM S [REDACTED] K [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
3. POM John Plumitallo	16755	961108	075 PCT
4. POM R [REDACTED] W [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
5. POM M [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM C [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
2. SGT M [REDACTED] H [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
3. POM S [REDACTED] C [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
4. POM N [REDACTED] N [REDACTED]	[REDACTED]	[REDACTED]	075 PCT
5. POF K [REDACTED] F [REDACTED]	[REDACTED]	[REDACTED]	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM John Plumitallo	Abuse of Authority: Police Officer John Plumitallo stopped A [REDACTED] S [REDACTED]	A . Substantiated
B . POM R [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer R [REDACTED] W [REDACTED] stopped A [REDACTED] S [REDACTED]	B . Substantiated
C . POM R [REDACTED] W [REDACTED]	Abuse of Authority: Police Officer R [REDACTED] W [REDACTED] strip-searched A [REDACTED] S [REDACTED]	C . Substantiated
D . POM John Plumitallo	Abuse of Authority: Police Officer John Plumitallo searched A [REDACTED] S [REDACTED]	D . Unsubstantiated
E . POM S [REDACTED] K [REDACTED]	Force: Police Officer S [REDACTED] K [REDACTED] used physical force against A [REDACTED] S [REDACTED]	E . Exonerated
F . POM S [REDACTED] K [REDACTED]	Force: Police Officer S [REDACTED] K [REDACTED] used physical force against A [REDACTED] S [REDACTED]	F . Exonerated
G . POM R [REDACTED] W [REDACTED]	Force: Police Officer R [REDACTED] W [REDACTED] used physical force against individuals.	G . Exonerated
H . POM John Plumitallo	Force: Police Officer John Plumitallo used physical force against A [REDACTED] S [REDACTED]	H . Exonerated

Officer(s)	Allegation	Investigator Recommendation
I . POM S [REDACTED] K [REDACTED]	Force: Police Officer S [REDACTED] K [REDACTED] used physical force against A [REDACTED] S [REDACTED]	I . Substantiated
J . POM R [REDACTED] W [REDACTED]	Force: Police Officer R [REDACTED] W [REDACTED] used physical force against A [REDACTED] S [REDACTED]	J . Exonerated
K . POM R [REDACTED] W [REDACTED]	Force: Police Officer R [REDACTED] W [REDACTED] used a chokehold against A [REDACTED] S [REDACTED]	K . Unsubstantiated
L . POM R [REDACTED] W [REDACTED]	Force: Police Officer R [REDACTED] W [REDACTED] restricted A [REDACTED] S [REDACTED] breathing.	L . Unsubstantiated
M . POM S [REDACTED] K [REDACTED]	Discourtesy: Police Officer S [REDACTED] K [REDACTED] spoke discourteously to A [REDACTED] S [REDACTED]	M . Substantiated
N . POM S [REDACTED] K [REDACTED]	Force: Police Officer S [REDACTED] K [REDACTED] used physical force against A [REDACTED] S [REDACTED]	N . Unsubstantiated
O . POM M [REDACTED] M [REDACTED]	Abuse of Authority: Police Officer M [REDACTED] M [REDACTED] interfered with K [REDACTED] C [REDACTED] use of a recording device.	O . Unsubstantiated
P . Officers	Discourtesy: Officers spoke discourteously to individuals.	P . Officer(s) Unidentified
Q . POM S [REDACTED] K [REDACTED]	Discourtesy: At the 75th Precinct stationhouse, Police Officer S [REDACTED] K [REDACTED] spoke discourteously to A [REDACTED] S [REDACTED]	Q . Substantiated
R . POM John Plumitallo	Other: Police Officer John Plumitallo improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	R . Other Misconduct
S . POM M [REDACTED] M [REDACTED]	Other: Police Officer M [REDACTED] M [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	S . Other Misconduct

Case Summary

On August 4, 2019, A [REDACTED] B [REDACTED] filed this complaint via the CCRB's website, on behalf of A [REDACTED] S [REDACTED]. On May 29, 2020, a duplicate Internal Affairs Bureau complaint was generated by the NYPD, after a newspaper article was written about the incident, in which Mr. S [REDACTED] alleged that NYPD officers broke his jaw (BR 66). On June 16, 2020, the CCRB received this complaint from IAB, under original log #20-13638.

On July 31, 2019, at approximately 10:25 p.m., A [REDACTED] S [REDACTED] left Gourmet Deli, located at Pitkin Avenue and Miller Avenue in Brooklyn. He encountered his friends K [REDACTED] C [REDACTED] and D [REDACTED], and a third individual, and they stood in front of the deli. Approximately five minutes later, PO John Plumitallo, PO R [REDACTED] W [REDACTED] and PO S [REDACTED] K [REDACTED] of the 75th Precinct, arrived in an unmarked vehicle. PO Plumitallo and PO W [REDACTED] exited the vehicle and stopped Mr. S [REDACTED] (**Allegations A-B: Abuse of Authority, substantiated**). PO W [REDACTED] strip-searched Mr. S [REDACTED] (**Allegation C: Abuse of Authority, substantiated**). PO Plumitallo allegedly also searched Mr. S [REDACTED] (**Allegation D: Abuse of Authority, unsubstantiated**). PO K [REDACTED] punched Mr. S [REDACTED] cheek (**Allegation E: Force, exonerated**). All three officers took Mr. S [REDACTED] down to the ground (**Allegations F-H: Force, exonerated**). A struggle then ensued, in which PO K [REDACTED] and PO W [REDACTED] punched Mr. S [REDACTED] (**Allegation I: Force, substantiated; Allegation J: Force, exonerated**). PO W [REDACTED] then allegedly placed Mr. S [REDACTED] in a chokehold, which allegedly restricted his breathing (**Allegations K and L: Force, unsubstantiated**). Officers then handcuffed Mr. S [REDACTED] and PO K [REDACTED] stated, "Get him the fuck up" (**Allegation M: Discourtesy, substantiated**). After officers lifted Mr. S [REDACTED] into an upright position, PO K [REDACTED] allegedly punched Mr. S [REDACTED] (**Allegation N: Force, unsubstantiated**). While Mr. C [REDACTED] recorded the interaction, PO M [REDACTED] M [REDACTED] of the 75th Precinct, shone his flashlight at Mr. C [REDACTED] cell phone (**Allegation O: Abuse of Authority, unsubstantiated**). Additionally, officers allegedly told individuals, "Get the fuck out of here" (**Allegation P: Discourtesy, officer(s) unidentified**). Mr. S [REDACTED] was transported to the 75th Precinct stationhouse, where PO K [REDACTED] stated, "When we take you out of handcuffs, don't try any funny shit" (**Allegation Q: Discourtesy, substantiated**). PO Plumitallo and PO M [REDACTED] failed to activate their body-worn cameras (**Allegations R and S: Other misconduct noted**).

Mr. S [REDACTED] was charged with obstructing governmental administration, disorderly conduct, and criminal possession of a weapon (BR 01). He received an ACD (Adjournment in Contemplation of Dismissal) and his charges were ultimately dismissed. Mr. C [REDACTED] received a summons for disorderly conduct (BR 65). Twenty-four BWC videos, surveillance footage from Emad Grocery, TARU footage, and cell phone footage recorded by Mr. C [REDACTED] were obtained (BR 02-29).

This case was consulted with an attorney. A spin off was generated to IAB under case number 202103221 for the allegation that PO W [REDACTED] touched Mr. S [REDACTED] genitals.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Plumitallo stopped A [REDACTED] S [REDACTED]

Allegation (B) Abuse of Authority: Police Officer R [REDACTED] W [REDACTED] stopped A [REDACTED] S [REDACTED]

Allegation (C) Abuse of Authority: Police Officer R [REDACTED] W [REDACTED] strip-searched A [REDACTED] S [REDACTED]

Allegation (D) Abuse of Authority: Police Officer John Plumitallo searched A [REDACTED] S [REDACTED]

In Mr. C [REDACTED] cell phone video (BR 29), at the 00:01 mark in the video player, PO Plumitallo exited the police vehicle and approached Mr. S [REDACTED]. PO Plumitallo reached his right arm toward Mr. S [REDACTED] torso. Mr. S [REDACTED] backed away and told PO Plumitallo not to touch him. At the 00:07 mark, PO W [REDACTED] ran toward Mr. S [REDACTED] and PO Plumitallo. As Mr. S [REDACTED] continually backed up, both officers walked toward him, outstretching their arms toward him. By the 00:08 mark, Mr. S [REDACTED] back was against the window of a nearby Domino's pizza shop, with PO Plumitallo and PO W [REDACTED]

each holding one of Mr. S█ arms, which were outstretched upward in the air. Mr. S█ pulled his arms away from the officers, as they continually tried to restrain his arms. At the 00:28 mark, PO W█ pulled the waistband of Mr. S█ athletic shorts away from his body. PO W█ then placed his right arm into Mr. S█ shorts and briefly moved his arm around while inside of the shorts. By the 00:33 mark, PO W█ arm was no longer inside Mr. S█ shorts. There were points at which the camera panned away from Mr. S█ and the officers. PO Plumitallo was not depicted searching Mr. S█. Mr. S█ was wearing a white tank top. In PO K█ BWC footage (BR 03), at the 00:23 mark, there was a nearby individual who wore a red t-shirt.

Mr. S█ testified (BR 30) that he exited Gourmet Deli and encountered his friends, Mr. C█ and D█ and a third individual. They stood in front of the deli for approximately five minutes. Aside from eating a snack he had purchased from the deli, Mr. S█, Mr. C█, D█ and the individual did not do anything. Mr. S█ then saw an unmarked vehicle drive past them and make a U-turn. Mr. C█ began recording with his cell phone. PO Plumitallo and PO W█ exited their vehicle and approached Mr. S█. Mr. S█ put his hands up and started backing up. The officers did not say anything. As he backed away, Plumitallo and PO W█ each grabbed one of Mr. S█ arms. PO W█ then put his hand in Mr. S█ shorts and touched his genitals over his underwear. PO Plumitallo entered all of Mr. S█ shorts pockets. At the time, Mr. S█ wore Nike athletic shorts, which had pockets on the left and right sides as well as a right back pocket. Mr. S█ had approximately \$469 in cash, with the bills folded in half, in his pocket.

PO Plumitallo testified (BR 31) that there was a 911 call for a physical fight, of which he solely recalled that there was a description of an individual wearing red. As he and his partners drove on Pitkin Avenue, they observed a group of approximately nine individuals at Pitkin Avenue and Miller Avenue, one of whom was wearing red. PO Plumitallo did not observe any fighting, but the group seemed loud and rowdy, as if they had just been in a fight. Upon seeing police officers, Mr. S█ walked away from the group, grabbed and tugged at his waistband, and walked around. PO Plumitallo's view was partially obstructed, but he suspected that Mr. S█ may have concealed a weapon, given the way he looked at the officers, adjusted his waistband, and walked away from the group. PO Plumitallo exited the vehicle first. He wanted to stop Mr. S█ because he believed that he may have concealed a weapon in his waistband. As he approached Mr. S█, Mr. S█ backed up. PO Plumitallo grabbed Mr. S█ arms in order to detain him, as he thought that Mr. S█ was going to run away. Mr. S█ became combative and moved his arms back and forth. Mr. S█ was then considered under arrest for obstructing governmental administration (OGA) because the officers tried to conduct a stop and Mr. S█ did not comply. PO Plumitallo was unable to determine whether there were any bulges on Mr. S█ person, as he was focused on Mr. S█ and his hands. PO Plumitallo did not search Mr. S█ and he did not observe PO W█ search him.

PO W█ testified (BR 32-34) that he observed Mr. S█ walk away from the group and stand behind a nearby parked vehicle. Mr. S█ peered at the officers and repeatedly popped his head over the roof of the vehicle. PO W█ could not see the rest of Mr. S█ body, as it was behind the vehicle. PO W█ did not suspect that Mr. S█ had committed any crime or violation. After PO W█ approached Mr. S█, he observed a "sizable" bulge in the front waist area of Mr. S█ shorts. The bulge had a long flat side aiming down Mr. S█ leg, with a long straight line. He could not estimate the length and did not recall whether there was any weight to the bulge. The bulge may have been caused by a firearm. PO W█ tried to frisk the area where he observed the bulge but was unable to do so. PO W█ did not enter Mr. S█ pockets. Mr. S█ was considered under arrest for OGA because when he pulled his hands away, he interfered with the officers' ability to conduct the stop. PO W█ did not see PO Plumitallo search Mr. S█. Upon viewing the cell phone footage, PO W█ stated that he did not independently recall reaching his hand inside Mr. S█ shorts or searching Mr. S█ and thus, was unable to explain why he did so.

PO W█████ did not recall whether he touched Mr. S█████ genitals over his underwear. PO W█████ did not believe that the video depicted his hand inside of Mr. S█████ shorts.

PO K█████ testified (BR 35-36) that after Mr. S█████ walked behind the vehicle, he moved his arms up and down toward his waistband area, which appeared to be an attempt to conceal an object in his waistband. PO K█████ viewpoint was obstructed by the vehicle. He believed the object may have been a weapon, given that they were in the area for a physical fight, there was large group of young males, one of the males fit the description, and it appeared that Mr. S█████ attempted to conceal an object in his waistband area. PO Plumitallo and PO W█████ exited the vehicle, while PO K█████ parked. Once PO K█████ reached the sidewalk, his partners were struggling with Mr. S█████. PO K█████ attention was focused on Mr. S█████ hands and he did not see whether there were any bulges on Mr. S█████ person. PO K█████ did not recall seeing PO W█████ or PO Plumitallo search Mr. S█████.

Event #D19073128885 was a 10-39 call for a physical fight in progress at Wyona Street and Pitkin Avenue (BR 37), which was two blocks away from the incident location. PO Brierre, who transported Mr. S█████ to the stationhouse, recovered a gravity knife from Mr. S█████ pants pocket (BR 38). The gravity knife was vouchered as arrest evidence by PO Plumitallo (BR 39).

A forcible stop may be conducted only when a police officer has an individualized reasonable suspicion that an individual committed, is committing, or is about to commit a felony or misdemeanor. A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. Reasonable suspicion must be based upon specific and articulable facts; “hunches or gut feelings are not sufficient.” Where the frisk reveals an object that the member of the service reasonably suspects may be a weapon, an officer may search only those interior portions of the individual’s clothing to remove the weapon felt during the frisk. NYPD Patrol Guide, Procedure 212-11 (BR 40).

In People v. Stevenson, 7 A.D.3d 820 (2004) (BR), the combination of the following factors was insufficient to justify a forcible stop and frisk, absent additional indicia of criminality: (1) an officer observed an individual with a bulge in the center of his waistband, (2) the individual adjusted his clothing around the bulge several times, and (3) the officer did not indicate that the bulge had the outline of a weapon (BR 41).

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or attempts to prevent a public servant from performing an official function by means of intimidation, physical force or interference, or any independently unlawful act. New York Penal Law § 195.05 (BR 42).

A strip-search is a search in which an individual’s undergarments and/or private areas are exposed or in which an individual’s clothing is removed, lifted up, or pulled down to expose undergarments or private areas. A strip-search may only be conducted with the knowledge and approval of a supervisor and must be conducted in a secure and private area. A strip-search may only be conducted when an officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in their clothing in such a manner that may not be discovered by a frisk or field search. NYPD Patrol Guide, Procedure 208-05 (BR 67).

When PO Plumitallo and PO W█████ approached and stopped Mr. S█████ neither officer had reasonable suspicion that he committed, was committing, or was about to commit a crime. The officers stopped their vehicle when they observed a group, which was two blocks away from the 911 call location, with one individual whose t-shirt color matched the clothing description. Each

officer's testimony regarding their observations about Mr. S [REDACTED] varied – with Mr. S [REDACTED] either grabbing at his waistband, peering at the officers over a roof of a vehicle, or attempting to conceal an object in his waistband. Nevertheless, the point at which PO Plumitallo and PO Weekes pursued Mr. S [REDACTED] reached for his arms, and restricted his movement, none of those justifications were sufficient to provide the requisite reasonable suspicion to stop him. Additionally, as PO Weekes testified that he observed a bulge on Mr. S [REDACTED] person solely after the stop was initiated, this cannot be considered a justification for the stop itself. It is therefore recommended that **Allegations A and B** be closed as **substantiated**.

The investigation does not credit PO Plumitallo and PO W [REDACTED] assertion that when they approached Mr. S [REDACTED] and he backed up and pulled his hands away, this constituted an OGA violation. Mr. S [REDACTED] conduct – notwithstanding that this was an unlawful stop – did not prevent the officers from stopping him. Thus, PO W [REDACTED] search cannot be justified as a search incident to a lawful arrest. Further, video evidence shows PO W [REDACTED] pulling Mr. S [REDACTED] shorts away from his body, in a manner that inevitably exposed Mr. S [REDACTED] undergarments. PO W [REDACTED] conducted this strip-search absent the requisite suspicion required by Patrol Guide, without ensuring that the search was conducted in a private location, and without authorization from his supervisor – as no supervisor was present and video footage does not depict officers calling a supervisor. It is therefore recommended that **Allegation C** be closed as **substantiated**.

While video footage does not depict PO Plumitallo searching Mr. S [REDACTED] there are several seconds of the video footage where the camera is not focused on PO Plumitallo and PO W [REDACTED]. Thus, the investigation cannot rule out the possibility that PO Plumitallo searched Mr. S [REDACTED] in that timeframe. Given conflicting testimonies and inconclusive video evidence, it is therefore recommended that **Allegation D** be closed as **unsubstantiated**.

Allegation (E) Force: Police Officer S [REDACTED] K [REDACTED] used physical force against A [REDACTED] S [REDACTED]

Allegation (I) Force: Police Officer S [REDACTED] K [REDACTED] used physical force against A [REDACTED] S [REDACTED]

Allegation (J) Force: Police Officer R [REDACTED] W [REDACTED] used physical force against A [REDACTED] S [REDACTED]

In the TARU footage (BR 28), at the 25:40 mark in the video player, PO Plumitallo and PO W [REDACTED] exited their vehicle and approached Mr. S [REDACTED]. In addition to Mr. S [REDACTED] there were three individuals who stood in front of Domino's. By the 26:38 mark, there were five or six individuals present, who were within a few feet of the officers. In Mr. C [REDACTED] cell phone video (BR 29), after PO W [REDACTED] searched Mr. S [REDACTED] PO W [REDACTED] and PO Plumitallo attempted to restrain him. Mr. S [REDACTED] continually stiffened his arms and pulled away from the officers. At the 00:42 mark, PO K [REDACTED] assisted with attempting to handcuff Mr. S [REDACTED]. Mr. S [REDACTED] continually moved around and tensed his body. At the 00:48 mark, PO K [REDACTED] bent down and attempted to grab Mr. S [REDACTED] legs. Mr. S [REDACTED] then swung his right arm over PO K [REDACTED] back and knocked off his hat. At the 00:49 mark, PO K [REDACTED] swung his fist at Mr. S [REDACTED] which appeared to hit Mr. S [REDACTED] shoulder or upper body. At the 00:50 mark, PO K [REDACTED] drew his right arm back and then moved his closed fist in the direction of Mr. S [REDACTED] head. It was not visible where PO K [REDACTED] fist made contact. Officers then took Mr. S [REDACTED] down to the ground. The struggle continued, as PO K [REDACTED] and PO W [REDACTED] attempted to handcuff Mr. S [REDACTED] and PO Plumitallo transmitted a radio call for assistance. At the 01:20 mark, a Domino's employee approached PO W [REDACTED]. PO W [REDACTED] outstretched his arm toward the employee, and he then slapped PO W [REDACTED] arm. As Mr. S [REDACTED] lay on his side, with his knees drawn close to his torso and his arms in front of his body, PO K [REDACTED] body was straddled atop Mr. S [REDACTED] while PO W [REDACTED] held Mr. S [REDACTED] torso. At the 01:38 mark, Mr. S [REDACTED] moved his legs, so that PO K [REDACTED] lost his grasp of Mr. S [REDACTED] body. At the 01:39 mark, PO K [REDACTED] drew his right arm back and moved his arm forward, toward Mr. S [REDACTED] head. It was not visible whether PO K [REDACTED] fist was clenched or where his hand made physical contact. PO W [REDACTED] punched Mr. S [REDACTED] lower back once. Backup officers then arrived and handled crowd control. Throughout the interaction, the

individuals who were present yelled at officers and expressed their frustration about what was happening with Mr. S█. Aside from the Domino's employee, nobody else physically interfered with the arrest.

Mr. S█ testified that after PO W█ and PO Plumitallo searched him, PO W█ grabbed Mr. S█ by his waist and pulled him down to the ground. As Mr. S█ fell, PO K█ punched his right cheek, which caused the right side of Mr. S█' face to swell. PO K█ did not issue Mr. S█ any commands prior to punching him. While he was on the ground, one handcuff was placed on his left wrist and PO K█ held the other side of the handcuffs. PO K█ swung the handcuffs and attempted to hit Mr. S█ face with the handcuff. However, the handcuff fell, and PO K█'s fist hit the right side of Mr. S█ face. PO K█ then punched Mr. S█ three more times in the right side of his face. Upon watching Mr. C█' cell phone video, Mr. S█ also realized that PO W█ punched him two or three times in the back, on an old stab wound. Mr. S█ did not move around because three officers were on top of his back. At the time of his interview, Mr. S█ was 5'7" tall and weighed 125 pounds.

PO K█ testified that when he approached, PO W█ and PO Plumitallo were struggling with Mr. S█. PO K█ told a group of five to ten individuals to back up, and then went to assist his partners. Mr. S█ actively resisted and reached for his waistband area. As PO K█, PO Plumitallo, and PO W█ took Mr. S█ down to the ground, he continued to try to pull his arms away and tensed his upper body. PO K█ did not punch Mr. S█'s right cheek. While he attempted to gain control of Mr. S█'s hands, PO K█ solely punched Mr. S█ once, in his shoulder, while they were on the ground. PO K█ repeatedly told Mr. S█ to stop resisting and put his hands behind his back. Officers were then able to pull Mr. S█'s arms behind his back, and backup officers assisted with handcuffing Mr. S█. PO K█ did not see PO W█ punch Mr. S█. PO K█ had not previously interacted with Mr. S█. Upon viewing Mr. C█' cell phone video, PO K█ explained that at the 00:49 mark, he was trying to gain control of Mr. S█'s hands and that he was grabbing for Mr. S█'s arm, which just knocked off his hat. PO K█ did not recall if he was attempting to use a hand strike against Mr. S█. PO K█ further stated that it may have been at the 01:40 mark that he punched Mr. S█'s shoulder area.

PO W█ and PO Plumitallo's testimonies were consistent with PO K█'s, with the following additions and exceptions. PO W█ testified that as officers took Mr. S█ down to the ground, either PO K█ or PO Plumitallo attempted to punch Mr. S█, but he was not sure if the punch made contact. PO W█ punched Mr. S█ once on the right side of his lower back because he was trying to get control of Mr. S█'s hands. PO W█ was then able to gain control of one of Mr. S█'s hands. PO W█ was not familiar with Mr. S█ prior to this incident. Aside from the one punch that either PO K█ or PO Plumitallo threw, PO W█ did not know whether PO K█ punched Mr. S█ at any other point. PO Plumitallo testified that he did not see PO K█ swing handcuffs or punch Mr. S█ during the incident at any point.

PO K█ and PO W█ documented in TRIs that a hand strike was used against Mr. S█, in defense of self and other officers, in order to overcome resistance or aggression (BR 43). Two photographs taken by Mr. S█'s attorney depict swelling and abrasions on Mr. S█'s right cheek and jaw (BR 44-45). Another photograph depicts bruising underneath Mr. S█'s left eye (BR 46). According to their MOS photographs, PO K█ is 5'9" tall and weighs 200 pounds, PO W█ is 5'10" tall and weighs 210 pounds, and PO Plumitallo is 5'10" tall and weighs 200 pounds (BR 47-49).

Mr. S█ sought medical treatment from the Brooklyn Hospital Center on August 2, 2019. His admitting diagnosis was swelling to the face and body aches, with presentation of nasal congestion

and jaw pain. Mr. S█ informed medical staff that he was punched in the face by the police four times. The physical examination noted that Mr. S█ had right facial swelling and there was a suspicion of a jaw fracture, however it was ultimately determined that there was no evidence of a fracture of the facial bones. Mr. S█ was given ibuprofen for his pain and discharged (BR 50).

Although PO K██ testified that he solely punched Mr. S█' shoulder, video footage that depicts PO K██ drawing his arm back and moving his fist toward Mr. S█' head on two occasions, and photographs and medical records that detail Mr. S█' facial injuries, corroborate Mr. S█' testimony that PO K██ repeatedly punched him in the face. As such, the investigation determined by a preponderance of the evidence that PO K██ punched Mr. S█ in the face twice.

Officers must use only the reasonable force necessary to gain control or custody of a subject. In determining whether the use of force is reasonable, the following factors should be considered: "the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, size, age, and condition of the subject in comparison to the MOS, subject's violent history, if known, presence of hostile crowd or agitators, subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence." NYPD Patrol Guide, Procedure 221-01 (BR 51).

The investigation credits the following factors: Mr. S█ actively resisted while officers attempted to handcuff him. Officers did not have reasonable suspicion that Mr. S█ committed a violent crime. PO K██ and PO Plumitallo did not observe whether there were any bulges on Mr. S█' person. PO W██' description of the bulge he observed did not justify the conclusion that the bulge was a weapon. Mr. S█ was the only subject being apprehended. Mr. S█ was significantly smaller in stature than PO K██, PO W██, and PO Plumitallo. At various points, there were between three and six individuals present, who verbally expressed their frustration and stood a few feet away from the officers. The Domino's employee is the only individual who physically interfered, briefly, with Mr. S█' arrest. PO K██ and PO R██ were not familiar with Mr. S█ prior to this incident. When PO K██ first punched Mr. S█' face, they were all standing upright, and Mr. S█ was moving around and tensing his body. Mr. S█ had just swung his right arm in PO K██' direction, which knocked off his hat. When PO W██ and PO K██ punched Mr. S█ he was lying on his side, with his knees drawn close to his torso and his arms in front of his body.

In considering the totality of circumstances, officers were justified in using some degree of force to apprehend Mr. S█. The investigation determined that PO K██'s hand strike to Mr. S█' shoulder and PO W██' hand strike to Mr. S█' lower back constituted reasonable uses of force. Additionally, the first occasion when PO K██ punched Mr. S█' face was deemed reasonable, given that the officers were struggling to restrain Mr. S█ while he was upright, he was attempting to move away from them, and Mr. S█ had just swung his arm in PO K██' direction. As such, it is recommended that **Allegations E and J** be closed as **exonerated**.

However, when PO K██ punched Mr. S█' face the second time, Mr. S█ was on the ground, with his arms in front of his body. As such, the investigation determined that PO K██' second punch, with force sufficient to cause the aforementioned injuries to Mr. S█' face, was not reasonable under the circumstances. It is therefore recommended that **Allegation I** be closed as **substantiated**.

Allegation (F) Force: Police Officer [REDACTED] K [REDACTED] used physical force against [REDACTED] S [REDACTED]

Allegation (G) Force: Police Officer [REDACTED] W [REDACTED] used physical force against individuals.

Allegation (H) Force: Police Officer John Plumitallo used physical force against [REDACTED] S [REDACTED]

It is undisputed that PO K [REDACTED], PO W [REDACTED], and PO Plumitallo forcibly took Mr. S [REDACTED] down to the ground, while effecting his arrest. This is depicted in Mr. C [REDACTED] cell phone video (BR 29), beginning at the 00:35 mark in the video player. The officers were unable to handcuff Mr. S [REDACTED], as he stiffened his arms and pulled away. At the 00:42 mark, PO K [REDACTED] assisted with attempting to handcuff Mr. S [REDACTED]. At the 00:49 mark, PO K [REDACTED] used two hand strikes against Mr. S [REDACTED] (see Allegation E). The officers continued to struggle with Mr. S [REDACTED]. At the 00:51 mark, PO K [REDACTED] and PO W [REDACTED] grabbed Mr. S [REDACTED] and moved him downward toward the ground. Mr. S [REDACTED] fell into a seated position on the sidewalk. Throughout the interaction, there were several individuals in the vicinity who yelled at the officers and expressed their concern about what was happening.

Mr. S [REDACTED] testified that after PO W [REDACTED] and PO Plumitallo searched him, PO K [REDACTED] told PO Plumitallo and PO W [REDACTED] to get him on the floor. PO W [REDACTED] grabbed Mr. S [REDACTED] by his waist and pulled him down, which caused Mr. S [REDACTED] to fall. Mr. S [REDACTED] landed on the left side of his body, on his thigh.

PO Plumitallo testified that once Mr. S [REDACTED] was considered under arrest, he and PO W [REDACTED] tried to handcuff Mr. S [REDACTED]. As PO Plumitallo and PO W [REDACTED] attempted to restrain Mr. S [REDACTED]'s arms, he pulled away, moved around, and moved his arms up and down. PO Plumitallo feared for his safety because the officers were outnumbered, and the crowd was within two feet of Mr. S [REDACTED] and the officers. PO Plumitallo, PO K [REDACTED], and PO W [REDACTED] brought Mr. S [REDACTED] to the ground to try to control him because he was actively resisting.

PO W [REDACTED] and PO K [REDACTED]'s testimonies were consistent with PO Plumitallo's. PO W [REDACTED] further clarified that at one point, he placed his arm around the back of Mr. S [REDACTED] neck and used a "seatbelt maneuver," in which he attempted to pull Mr. S [REDACTED] toward himself in order to safely bring him to the ground. PO K [REDACTED] explained that he and his partners brought Mr. S [REDACTED] to the ground by grabbing his around waist and leg area but did not recall what specific actions each officer took.

PO K [REDACTED], PO W [REDACTED] and PO Plumitallo each prepared a TRI, in which it was documented that a forcible takedown was used in defense of self and other officers, in order to overcome resistance or aggression (BR 43).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (BR 51).

As PO K [REDACTED], PO W [REDACTED], and PO Plumitallo attempted to handcuff Mr. S [REDACTED] he continually stiffened his arms, pulled away, and moved around. Additionally, several bystanders yelled at the officers and stood in close proximity as officers attempted to effect the arrest. As such, PO K [REDACTED], PO W [REDACTED] and PO Plumitallo were justified in using force to take Mr. S [REDACTED] down to the ground, in order to safely take him into custody. It is therefore recommended that **Allegations F, G, and H** be closed as **exonerated**.

Allegation (K) Force: Police Officer [REDACTED] W [REDACTED] used a chokehold against [REDACTED] S [REDACTED]

Allegation (L) Force: Police Officer [REDACTED] W [REDACTED] restricted [REDACTED] S [REDACTED]' breathing.

In PO [REDACTED] M [REDACTED]'s BWC footage (BR 08), at the 00:11 mark in the video player, as PO

K [REDACTED] and PO W [REDACTED] struggled to handcuff Mr. S [REDACTED]. PO M [REDACTED] approached and restrained Mr. S [REDACTED]' legs. The officers continued to struggle with Mr. S [REDACTED]. At the 01:02 mark, Mr. S [REDACTED] stated, "Oh man," in a strained voice. At the 01:03 mark, PO W [REDACTED]' body was on top of Mr. S [REDACTED], who was lying on the ground. Mr. S [REDACTED] torso was on the ground and his head was turned to the left, with his right cheek pressed against the ground. An officer, who was not visible, had his right hand on top of Mr. S [REDACTED] head. PO W [REDACTED] left arm was positioned underneath Mr. S [REDACTED] head, with the crook of his elbow positioned underneath Mr. S [REDACTED] chin, so that his entire forearm was underneath Mr. S [REDACTED] head. PO W [REDACTED] then removed his arm from underneath Mr. S [REDACTED] head. BWC footage did not capture PO W [REDACTED] actions prior to the 01:02 mark. This is partially depicted in Mr. C [REDACTED] cell phone video (BR 29), beginning at the 02:27 mark. While PO W [REDACTED] body was on top of Mr. S [REDACTED] back, PO Plumitallo held Mr. S [REDACTED] head with his right hand, as PO W [REDACTED] braced his own body with his right arm. The positioning of PO W [REDACTED] left arm and Mr. S [REDACTED] head was not visible. At the 03:00 mark, PO W [REDACTED] removed his left arm from underneath Mr. S [REDACTED].

Mr. S [REDACTED] testified that while he was on the ground, on his stomach, PO W [REDACTED] placed his forearm around the front of Mr. S [REDACTED] neck. Mr. S [REDACTED] was unable to breathe or say anything while PO W [REDACTED] choked him. At the time, Mr. S [REDACTED] was not moving or doing anything with his body. PO W [REDACTED] squeezed his neck for approximately two minutes.

PO W [REDACTED] testified that while Mr. S [REDACTED] was on the ground, he tried to elevate his body off the ground. PO W [REDACTED] put his bodyweight on Mr. S [REDACTED] in order to prevent him from running. PO W [REDACTED] did not place his forearm on Mr. S [REDACTED] neck or place him into a chokehold. Mr. S [REDACTED] did not demonstrate that he had trouble breathing at any point. After being presented with PO M [REDACTED]'s BWC footage, PO W [REDACTED] stated that he did not apply any pressure to Mr. S [REDACTED]' neck. PO W [REDACTED] did not have an independent recollection of this part of the incident and was thus unable to explain what he did or intended to do with his left arm.

PO K [REDACTED], PO Plumitallo, PO M [REDACTED] (BR 52), and PO N [REDACTED] (BR 53) denied observing PO W [REDACTED] place Mr. S [REDACTED] into a chokehold or restrict his breathing. PO M [REDACTED] and PO N [REDACTED], of the 75th Precinct, were backup officers who arrived and assisted with handcuffing Mr. S [REDACTED]. All the officers testified that there was no indication that Mr. S [REDACTED] was unable to breathe. After being presented with PO M [REDACTED]'s BWC footage, PO K [REDACTED] testified that he did not independently recall seeing an officer with his left arm around Mr. S [REDACTED]' neck.

Members of service shall not use a chokehold, which includes, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. NYPD Patrol Guide, Procedure 221-01 (BR 51).

BWC footage depicts PO W [REDACTED] forearm underneath Mr. S [REDACTED] head, with the crook of his elbow positioned under Mr. S [REDACTED] chin, as Mr. S [REDACTED]' cheek is on the ground. Although PO W [REDACTED] was unable to provide any explanation about what he was doing or trying to do with his left arm, absent additional video footage that clearly depicts the entirety of what occurred, the investigation was unable to determine whether PO W [REDACTED] actions constituted a chokehold. As such, the investigation was also unable to determine whether PO W [REDACTED] restricted Mr. S [REDACTED] breathing. It is therefore recommended that **Allegations K and L** be closed as **unsubstantiated**.

Allegation (M) Discourtesy: Police Officer K [REDACTED] spoke discourteously to S [REDACTED]
In PO K [REDACTED]'s BWC footage (BR 07), at the 00:35 mark in the video player, PO K [REDACTED] stated, "Get him the fuck up" and "Fuck up." At that point, Mr. S [REDACTED] was handcuffed and lying on the ground.

Mr. S█ did not allege that PO K██ used profanity during the incident.

PO K██ testified that he told his partners, in reference to Mr. S█, "Get him the fuck up." The statement was not directed toward Mr. S█ and at the time, PO K██ was frustrated and out of breath.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." NYPD Patrol Guide, Procedure 200-02 (BR 54). The NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 76927/04 (2004) (BR 55).

At the time PO K██ told his partners, "Get him the fuck up," Mr. S█ was lying face-down on the ground and was handcuffed. The struggle with Mr. S█ had concluded and officers had the situation under control. Though PO K██ stated that his statement was not directed toward Mr. S█, Mr. S█ was within earshot and his freedom of movement was restricted. Further, PO K██ testified that was expressing his frustration, which is not a justifiable reason to use profanity, as per the NYPD DCT case. PO K██'s statements were discourteous in nature and violated the NYPD's mandate to treat citizens with compassion, courtesy, professionalism, and respect. It is therefore recommended that **Allegation M** be closed as **substantiated**.

Allegation (N) Force: Police Officer K██ used physical force against S█
In Mr. C██ cell phone video (BR 29), at the 03:25 mark in the video player, PO K██ and PO Plumitallo lifted Mr. S█, who was handcuffed, into an upright position. The officers each held one of Mr. S█ arms as they walked him toward the police vehicle. The video potentially depicted Mr. S█ spitting at PO K██, insofar as Mr. S█ moved his head in PO K██'s direction, and PO K██ immediately pulled away. PO K██ then moved his left arm toward Mr. S█ neck and head area, which appeared to cause Mr. S█ head to move slightly downward. Given the speed and angle of the footage, it did not clearly depict PO K██'s action or where his hand made physical contact. This is also captured in PO K██'s BWC footage (BR 07), beginning at the 00:35 mark. At the 00:47 mark, PO K██ told Mr. S█ to stop spitting. At the 01:10 mark, PO K██ told Mr. S█ "Keep your fucking head down and stop spitting on me." PO K██'s left arm was outstretched in front of him, but it was not visible what he was doing with his arm.

A discourteous word allegation was not pleaded against PO K██, as it was not alleged by Mr. S█ or any civilian, and the investigation determined that it did not rise to the level of misconduct.

Mr. S█ testified that after he was handcuffed, officers lifted him into an upright position. As Mr. S█ stood up, PO K██ punched him in the face. PO K██ then punched Mr. S█' face again, as officers led him to the police vehicle.

PO K██ testified that after the struggle on the ground, officers handcuffed Mr. S█. PO K██ did not punch Mr. S█ at any point after he was handcuffed. PO K██ did not recall who walked Mr. S█ to the police vehicle, or whether there was a struggle. After viewing his BWC footage, PO K██ explained that Mr. S█ was being combative even after being handcuffed, and he spat in PO K██'s face. After viewing Mr. C██ cell phone video, PO K██ explained that he moved his left hand toward Mr. S█'s back area, to turn his body away, as Mr. S█ was yelling

and likely spitting at the time. He denied used a hand strike against Mr. S [REDACTED] after he was handcuffed.

PO W [REDACTED] testified that after Mr. S [REDACTED] was handcuffed, he entered Domino's to find the employee who hit him earlier in the interaction. He did not see Mr. S [REDACTED] being taken to a police vehicle. PO W [REDACTED] did not know whether PO K [REDACTED] punched Mr. S [REDACTED] after he was handcuffed. PO Plumitallo testified that he did not see PO K [REDACTED] punch Mr. S [REDACTED] during the incident at any point.

In his TRI, PO K [REDACTED] documented that he used a hand strike against Mr. S [REDACTED], in defense of self and other officers, in order to overcome resistance or aggression (BR 43). Two photographs taken by Mr. S [REDACTED] attorney depict swelling and abrasions on Mr. S [REDACTED]' right cheek and jaw (BR 44-45). Another photograph depicts bruising underneath Mr. S [REDACTED]' left eye (BR 46). Mr. S [REDACTED] sought medical treatment from the Brooklyn Hospital Center on August 2, 2019. His admitting diagnosis was swelling to the face and body aches, with presentation of nasal congestion and jaw pain. Mr. S [REDACTED] informed medical staff that he was punched in the face by the police four times. The physical examination noted that Mr. S [REDACTED] had right facial swelling and there was a suspicion of a jaw fracture, however it was ultimately determined that there was no evidence of a fracture of the facial bones. He was given ibuprofen and discharged (BR 50).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Officers shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault. NYPD Patrol Guide, Procedure 221-01 (BR 51).

Mr. S [REDACTED] testified that PO K [REDACTED] punched his face twice after he was handcuffed, which is supported by photographic evidence and medical records (see Allegations E and I). Conversely, PO K [REDACTED] denied punching Mr. S [REDACTED] after he was handcuffed and testified that he moved his left arm toward Mr. S [REDACTED] in order to move his body away, as Mr. S [REDACTED] was spitting and being combative. Based upon the video footage, which is ambiguous, both of these explanations remain plausible. As such, given conflicting testimonies and absent additional evidence, it is therefore recommended that **Allegation N** be closed as **unsubstantiated**.

Allegation (O) Abuse of Authority: Police Officer [REDACTED] M [REDACTED] interfered with [REDACTED] C [REDACTED] ' use of a recording device.

In PO O [REDACTED]'s BWC footage (BR 13), at the 00:32 mark in the video player, several officers, including PO M [REDACTED], stood in front of Mr. C [REDACTED]. In the background, on the left-side of the screen, PO K [REDACTED] and other officers stood next to Mr. S [REDACTED], who was handcuffed. At the 00:33 mark, PO M [REDACTED] lifted his left arm upward and pointed his flashlight at Mr. C [REDACTED], who was recording at the time. Officers repeatedly told Mr. C [REDACTED] to back up. Mr. C [REDACTED] walked away and then told PO M [REDACTED] to stop shining the light in his face. In Mr. C [REDACTED] cell phone video (BR 29), at the 03:33, 03:35, 03:41, and 03:43 marks, a bright light obscures the cell phone recording. In total, the obstruction lasted for less than 10 seconds and Mr. C [REDACTED] continued recording after that point. The interaction occurred at night, in front of a Domino's, which was well lit and illuminated the area.

Mr. S [REDACTED] testified that after he was handcuffed, around the time that officers lifted him into an upright position, a female officer put her flashlight in front of Mr. C [REDACTED]' phone for approximately two to three minutes. The investigation ultimately identified this officer as PO M [REDACTED]

Mr. C [REDACTED] was deemed uncooperative with the investigation.

PO M [REDACTED] testified (BR 56) that he did not recall whether any civilian recorded the interaction, whether he took his flashlight out, whether he shone his flashlight at a civilian or a civilian's cell phone, or whether he took any actions to prevent a civilian from recording. In his understanding, civilians are always able to record police interactions. Upon viewing PO O [REDACTED]'s BWC footage, PO M [REDACTED] stated that he utilized his flashlight solely because it was dark outside. The NYPD-issued flashlights are very strong and when pointed at a civilian, it illuminates their entire body. PO M [REDACTED] was not attempting to direct his flashlight at Mr. C [REDACTED] cell phone. He did not attempt to obstruct Mr. C [REDACTED] ability to record the interaction. Mr. C [REDACTED] was allowed to record the police interaction.

When PO M [REDACTED] utilized his flashlight and pointed it at Mr. C [REDACTED], it intermittently obstructed Mr. C [REDACTED] cell phone recording for several seconds. However, PO M [REDACTED], who assisted with crowd control, testified that he did not intentionally direct his flashlight at Mr. C [REDACTED] phone or attempt to interfere with his ability to record. As such, given conflicting testimonies and absent additional information, the investigation could not determine whether PO M [REDACTED] intentionally interfered with Mr. C [REDACTED] cell phone recording. It is therefore recommended that **Allegation O** be closed as **unsubstantiated**.

Allegation (P) Discourtesy: Officers spoke discourteously to individuals.

It is disputed as to whether officers told individuals, "Get the fuck out of here." This statement was not captured on cell phone or BWC footage. Video footage did not capture the entirety of the interaction after Mr. S [REDACTED] was handcuffed.

Mr. S [REDACTED] alleged that after he was handcuffed, officers, whom he did not identify, told individuals in the crowd, "Get the fuck out of here."

Mr. B [REDACTED] stated (BR 57) that he observed the end of the incident from across the street, at the opposite corner of Pitkin Avenue and Miller Avenue. Mr. S [REDACTED] was already handcuffed and being led to the police vehicle. There was a crowd of approximately 15-25 people observing the incident and approximately 21 officers who were present. After Mr. S [REDACTED] went into the vehicle, officers told the observers to go home. Mr. B [REDACTED] did not allege that officers stated, "Get the fuck out of here."

Mr. C [REDACTED] was deemed uncooperative with the investigation, and a statement was not obtained from any other civilian.

PO W [REDACTED] testified that he heard an officer tell individuals in the crowd, "Get the fuck out of here," but he did not recall who made that statement. PO K [REDACTED], PO Plumitallo, Sgt. H [REDACTED], PO N [REDACTED], PO M [REDACTED], PO M [REDACTED], and PO [REDACTED] C [REDACTED] (BR 64) each denied or did not recall stating, "Get the fuck out of here," or hearing another officer make that statement. PO C [REDACTED], of the 75th Precinct, was one of the backup officers who arrived.

Given conflicting testimonies and incomplete video footage, the investigation was unable to identify which officers allegedly spoke discourteously or to whom the statement was allegedly made. It is therefore recommended that **Allegation P** be closed as **officer(s) unidentified**.

Allegation (O) Discourtesy: At the 75th Precinct stationhouse, Police Officer [REDACTED] K [REDACTED] spoke discourteously to [REDACTED] S [REDACTED]

It is undisputed that in the 75th Precinct stationhouse PO K [REDACTED] told Mr. S [REDACTED], "When we take you out of handcuffs, don't try any funny shit." This is captured in his BWC footage (BR 04), at the

03:08 mark in the video player.

Mr. S [REDACTED] did not allege that PO K [REDACTED] used profanity during the incident.

PO K [REDACTED] testified that when he told Mr. S [REDACTED] "When we take you out of handcuffs, don't try any funny shit," he used the term "shit" as a synonym of "stuff," and that it was not meant in a derogatory way. PO K [REDACTED] typically speaks in layman's terms so that civilians understand him.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." NYPD Patrol Guide, Procedure 200-02 (BR 54). The NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 76927/04 (2004) (BR 55).

At the time when PO K [REDACTED] stated, "When we take you out of handcuffs, don't try any funny shit," Mr. S [REDACTED] was handcuffed, and the stressful situation had concluded. Though PO K [REDACTED] stated that he did not intend his statement to be derogatory, his statement was not a permissible use of a discourteous word, and violated his mandate to treat citizens with compassion, courtesy, professionalism, and respect, as per the NYPD DCT case and the Patrol Guide. As such, it is therefore recommended that **Allegation Q** be closed as **substantiated**.

Allegation (R) Other Misconduct Noted: Police Officer John Plumitallo improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (S) Other Misconduct Noted: Police Officer [REDACTED] M [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

PO Plumitallo did not activate his BWC and PO M [REDACTED] did not affix his BWC to his uniform when he responded to this incident. PO Plumitallo and PO M [REDACTED] were issued BWCs more than 90 days prior to this incident. PO Plumitallo stated that he activated his BWC, but it may have fallen, and he did not know if his camera recorded. PO M [REDACTED] stated that he did not have his BWC with him, as he needed to quickly respond to the radio call for additional units.

When an officer is assigned a BWC, prior to roll call, the officer must retrieve their BWC, ensure that it is operational, and attach the BWC to their outermost garment. Officers are mandated to activate their BWC prior to engaging in, or assisting another officer with, interactions with persons suspected of criminal activity and radio call requests for additional assistance. NYPD Patrol Guide, Procedure 212-123 (BR 58).

Given that PO Plumitallo and PO M [REDACTED] did not use their BWCs are necessitated by the Patrol Guide, it is recommended they be cited for **other misconduct** for **Allegations R and S**.

Civilian and Officer CCRB Histories

- Mr. S [REDACTED] has been a party to three CCRB complaints and has been named a victim in 11 allegations (BR 59).
 - 200713735 involved a stop allegation, which was exonerated; and allegations of threat of force and search of person, which were unsubstantiated.
 - 201907360 involved question and failure to provide RTKA allegations, which were closed as officer(s) unidentified.

- 201907678 involved stop, question, frisk, offensive language, and failure to provide RTKA allegations. To date, this investigation is still open.
- This is the first complaint to which Mr. C [REDACTED] has been a party (BR 60).
- PO K [REDACTED] has been a member of service for seven years and has been a subject in 12 CCRB complaints and 33 allegations, of which two were substantiated.
 - 201708175 involved allegations of physical force and a stop. The CCRB recommended charges and the NYPD imposed a forfeiture of 18 vacation days.
 - 201906398 and 202001672 are pending investigation.
 - PO K [REDACTED]'s CCRB history does not show a pattern pertinent to this investigation.
- PO W [REDACTED] has been a member of service for five years and has been a subject in six CCRB complaints and 11 allegations, of which one was substantiated.
 - 20188991 involved an allegation of a failure to provide a business card. The CCRB recommended instructions, and the NYPD concurred.
 - PO W [REDACTED] CCRB history does not show a pattern pertinent to this investigation.
- PO Plumitallo has been a member of service for five years and has been a subject in seven CCRB complaints and 25 allegations, none of which were substantiated. Three cases are pending investigation. PO Plumitallo's CCRB history does not show a pattern pertinent to this investigation.
- PO M [REDACTED] has been a member of service for nine years and has been a subject in three CCRB complaints and six allegations, none of which were substantiated. PO M [REDACTED]'s CCRB history does not show a pattern pertinent to this investigation.

Mediation, Civil and Criminal History

- This complaint was not suitable for mediation.
 - As of September 9, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 61).
 - According to the Office of Court Administration (OCA), Mr. S [REDACTED] has no history of convictions in New York City (BR 62).
 - According to OCA, between March 19, 2012 and February 19, 2021, Mr. C [REDACTED] was convicted of disorderly conduct (once) and received varying amounts of fines. OCA does not list any other convictions (BR 63).
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Squad No.: 6

Investigator: Laura Strauss _____ Inv. Laura Strauss _____ 5/27/2021
 Signature Print Title & Name Date

Squad Leader: Jessica Peña _____ IM Jessica Peña _____ 5/28/2021
 Signature Print Title & Name Date

Reviewer: _____
 Signature Print Title & Name Date